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2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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6 CONSTELLATION NEWENERGY: CIVIL ACTION
INC., :

7 Plaintiff, :

8 :
9 :
10 vs. :
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25 :
16 POWERWEB TECHNOLOGIES, :
17 INC., et al., :
18 Defendants. : NO. 02-CV-2733 (HB)

12 - - -
13 Philadelphia, Pennsylvania

14 Thursday, July 1, 2004
15 - - -

16 Pretrial Examination of CONSTANTINOS
17 GUS PAPPAS, CPA, taken pursuant to notice, at
18 the law offices of Wolf, Block, 1650 Arch
19 Street, 22nd Floor, on the above date,
20 beginning at approximately 10:05 a.m., before
21 Debra Ann Whitehead, a Court Reporter, an
22 Approved Reporter of the United States
23 District Court, and Notary Public.

24 V A R A L L O Incorporated
Litigation Support Services
1835 Market Street, Suite 600
1835 Market Street
Philadelphia, PA 19103
(215) 561-2220

1 Constantinos Gus Pappas, CPA
2 services?

3 A. For litigation support services.

4 MS. GOODCHILD: Objection to
5 the form.

6 BY MR. WHITE:

7 Q. Had you ever been engaged in
8 litigation support services before?

9 A. No.

10 Q. The first time was this case?

11 A. Yes.

12 Q. I just want to ask you a question.
13 In fall of 2000, you had recently
14 become a CPA; correct?

15 A. In the beginning of 2000, correct.

16 Q. You worked in accounting firms for
17 almost ten years, but you were not a licensed
18 CPA; correct?

19 A. Correct.

20 Q. In your resume, you have indicated
21 that you were a manager. Let me just get the
22 name of the company.

23 You were at William E. Howe and
24 Company from 1990 to 1999. You indicated you
25 were a manager.

1 Constantinos Gus Pappas, CPA
2 Pennsylvania, do you have to take continuing
3 education?

4 A. Yes.

5 Q. Have you taken continuing education
6 courses?

7 A. Yes.

8 Q. Have you taken any continuing
9 education courses that dealt with litigation
10 support services specifically with respect to
11 presentation or calculation of damages?

12 A. No.

13 Q. Have you taken any continuing
14 accounting education courses dealing with
15 calculation of lost profits?

16 A. No.

17 Q. Have you taken any courses dealing
18 with calculation or presentation of damages?

19 A. No.

20 Q. Have you taken any courses dealing
21 with calculation or presentation of lost
22 profits?

23 A. No.

24 Q. Have you ever prepared a lost
25 profits analysis?

1 Constantinos Gus Pappas, CPA

2 A. No.

3 MS. GOODCHILD: Objection to

4 the form.

5 Prior to the reports that he

6 submitted here?

7 MR. WHITE: The question has

8 been asked.

9 BY MR. WHITE:

10 Q. Have you ever prepared a damages

11 analysis, other than what you did here?

12 A. No.

13 Q. Were there any texts or periodicals

14 that you consulted for guidance as to how to

15 prepare a damage analysis?

16 A. Yes.

17 Q. Which text?

18 A. Practitioners Public -- we call it

19 PPC. They have a three-volume -- three

20 volumes for litigation support services.

21 Q. You didn't identify that in the list

22 of references that are at Tab H of your

23 report, did you?

24 A. I don't recall if I did or not.

25 Q. I will just show you Tab H of your

1 Constantinos Gus Pappas, CPA
2 report. I will mark it in a second.
3 Actually, it's already been marked.

4 A. That's correct, I did not list it.

5 Q. Was there a reason you didn't list
6 it?

7 A. My understanding was, it was only
8 materials that were directly related to the
9 case that needed to be listed.

10 Q. Did you rely upon any other
11 publications to give you guidance in
12 preparation of your report?

13 A. Yes; there is a litigation support
14 services guide from the AICPA.

15 Q. What's the AICPA?

16 A. The American Institute of Certified
17 Public Accountants.

18 Q. Do you find publications by the
19 AICPA to be authoritative in your field?

20 A. Yes.

21 Q. The first reference, would you tell
22 me what the name of that is again, the three
23 volume?

24 A. It is PPC, and I don't remember what
25 they stand for. Practitioners Publishing

1 Constantinos Gus Pappas, CPA

2 A. Yes.

3 Q. The litigation support guide from
4 the AICPA, do you own a copy of that?

5 A. Yes, I do.

6 Q. Do you know what year or edition it
7 is that you looked at?

8 A. It would have to be the most recent.
9 I just ordered it.

10 Q. Did you consult with other
11 accountants for guidance in preparation of
12 these reports?

13 A. No.

14 Q. Did you consult with any attorneys,
15 I mean any attorneys including those from Ms.
16 Goodchild's office or the tenant in your
17 building, anybody, for preparation of these
18 reports?

19 MS. GOODCHILD: I am to object
20 to the form of the question.

21 A. Yes, I did. I asked Mr. Friedman if
22 he had any examples he may possibly be able to
23 show me.

24 Q. Did he show you some examples?

25 A. No; he had nothing involving that,

1 Constantinos Gus Pappas, CPA

2 Q. 2004, did Powerweb have losses?

3 A. Yes.

4 Q. Was NewEnergy responsible for those
5 losses?

6 MS. GOODCHILD: Objection.

7 A. No.

8 Q. One of the documents you talked
9 about this morning -- the PPC document, you
10 said you reviewed this?

11 A. Yes.

12 Q. I think you said you found this
13 authoritative?

14 A. Yes.

15 Q. Did you look at the -- there is a
16 tab here. It is, I guess, Section 300. It is
17 called lost Profit Analysis Involving Closely
18 Held Business. Is that the chapter that you
19 relied upon?

20 Would you like to look at it?

21 A. Yes.

22 Yes, I relied on that chapter. Yes.

23 Q. Let me turn you to the part I want
24 you to look at. On Page 3-10 through 3-11,
25 there is an item called Steps 3 through 5,

1 Constantinos Gus Pappas, CPA

2 Excuse me. What were the profits
3 that Powerweb had, that it actually had, under
4 the first year of the contract?

5 MS. GOODCHILD: Objection to
6 the form.

7 A. Yes, I would have to go back and
8 review the accounting documents to
9 refamiliarize myself with it.

10 Q. Did Powerweb have a profit on that
11 deal?

12 MS. GOODCHILD: Objection to
13 the form.

14 A. Powerweb would have -- Powerweb
15 would have had, if you separately pulled out
16 what it did with Baltimore Gas & Electric, it
17 would have had a profit, probably.

18 Q. Did you say, "probably?"

19 A. It probably would have had a profit.

20 Q. Did you study it?

21 A. Yes; I reviewed it, and I can't
22 remember the exact numbers right now.

23 Q. What documents did you look at to
24 make that assumption?

25 A. The accounting records.

1 Constantinos Gus Pappas, CPA

2 Q. Which accounting records?

3 A. Powerweb's accounting records.

4 Q. Which parts of the accounting
5 records?

6 A. What's on their computer system.

7 Q. Tell me which parts, because I am
8 going to ask counsel to get them for me when
9 we are done.

10 A. I would have, again, pulled out, out
11 of QuickBooks, QuickReports that show me what
12 we spent on Baltimore Gas & Electric and what
13 income came in from Baltimore Gas & Electric.

14 Q. And do you recall approximately what
15 was spent on Baltimore Gas & Electric?

16 A. I don't recall in total. I recall
17 reviewing invoices concerning paying -- to
18 purchase the parts for the meters, and
19 reviewing invoices of our communication fees,
20 Powerweb's communication fees.

21 Q. Do you recall reviewing any of the
22 documents that Mr. Budike sent back to
23 Baltimore Gas & Electric where he demanded
24 payments from Baltimore Gas & Electric for
25 amounts owed to it, owed to Powerweb?

1 Constantinos Gus Pappas, CPA

2 MS. GOODCHILD: Objection.

3 A. Sorry. There is a reason why I
4 relied on those type of accounts.

5 Q. What's your reason?

6 A. My understanding of NewEnergy's
7 business was that they would go for the
8 high-end users, the high-end accounts in the
9 ISOs, similar to the type of key accounts that
10 BG&E has.

11 Q. They wouldn't go after general
12 business, which would be, like, medium C & I?

13 A. I don't think NewEnergy would go
14 after Tony's pizza shop around the corner.

15 Q. You don't know because you didn't
16 ask anybody at NewEnergy what accounts they
17 were planning on going after; right?

18 A. I have seen NewEnergy's website and
19 I have seen the types of accounts they go
20 after.

21 Q. That's nothing that you referred to
22 in your report, is it?

23 A. It's -- no, I don't refer to it in
24 my report. It is open to the public.

25 Q. It is not a document you relied upon

1 Constantinos Gus Pappas, CPA
2 in your report, is it?

3 A. I didn't print any documents; I just
4 read news clips.

5 Q. You didn't identify it as one of the
6 documents, stated documents, that you relied
7 upon in formulating your opinions, did you?

8 A. No.

9 Q. It is not in Tab H of your initial
10 report, is it?

11 A. It is not in Tab H.

12 Q. For those customers, the price point
13 is \$15 to \$100; right?

14 MS. GOODCHILD: Objection to
15 the form.

16 A. For which customers?

17 Q. General business customers.

18 A. I'm sorry. What page are you on,
19 11?

20 Q. Page 12.

21 A. Correct.

22 Q. It says, "Based on the qualitative
23 findings, a ceiling of \$25 was imposed on a
24 monthly price for Total package."

25 Do you see that?